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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JASON BERGER,

Plaintiff,

Case No. 18-cv-08956-CS

-vs-

IMAGINA CONSULTING, INC.,

Defendant.

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United States Courthouse
White Plains, New York

November 13, 2019
10:00 a.m.

B e f o r e:

HONORABLE CATHY SEIBEL

District Judge

A P P E A R A N C E S:

LIEBOWITZ LAW FIRM, PLLC
Attorneys for Plaintiff
BY: RICHARD LIEBOWITZ

No Appearance for Defendant

NEWMAN & GREENBERG, LLP
Attorneys for Mr. Liebowitz
BY: RICHARD A. GREENBERG
WILLIAM DOBIE

1 THE DEPUTY CLERK: The Honorable Cathy Seibel
2 presiding. Berger versus Imagina Consulting.

3 THE COURT: Good morning, Mr. Greenberg.

4 MR. GREENBERG: Good morning, Judge.

5 THE COURT: And Mr. Dobie.

6 MR. DOBIE: Good morning.

7 THE COURT: And Mr. Liebowitz. Everyone can have a
8 seat.

9 I just want to, before we get started, put on the
10 record a couple of things. I got a letter from Mr. Greenberg
11 yesterday. It's dated the 11th. It arrived in my chambers on
12 the 12th, and Mr. Greenberg requested that it be filed under
13 seal to protect the confidentiality of intimate personal
14 details, and my chambers advised Mr. Greenberg that I wasn't
15 going to file it yesterday. I would allow him to tell me what
16 he thinks should be redacted, but in my view, there is very
17 little in here that should be redacted. It's a judicial
18 document. There is a presumption that it's public. There are a
19 few things in the attachments that I think are properly redacted
20 such as home addresses, social security numbers, things like
21 that; but most of this is going to be public, and it's going to
22 be public today, but I will at the end tell counsel what I think
23 should be redacted and hear any further requests for redaction.

24 The other thing I wanted to put on the record is that
25 I got an email directly to me from somebody who didn't give his

1 or her real name, and who I don't know, with I guess what I will
2 call some suggestions about how I might want to handle this
3 matter and with a spreadsheet attached, which I did not open,
4 and a bunch of links attached to other cases involving
5 Mr. Liebowitz, which I did not click on; but I am going to ask
6 my courtroom deputy to hand Mr. Greenberg a copy of it because I
7 think it's only fair since it came to my attention. If you see
8 what's in it, but I am not going to give it any weight
9 whatsoever. I will give you a moment to take a look at it. But
10 I am disregarding it.

11 I redacted out the email address from which it came
12 because the person asked to remain anonymous, actually asked me
13 not even to share this document, but, you know, when you try to
14 influence a judge, you run the risk that it might not stay
15 private. And I reiterate, I have disregarded this completely.

16 All right. So I have Mr. Greenberg's letter. I am
17 glad that my most recent order to show cause got Mr. Liebowitz's
18 attention. I remain baffled as to why it took so long, and I
19 had some questions, since one of the things that I am being
20 asked to do is vacate the contempt orders, and nobody has to
21 answer them if they don't want to if they feel it will make
22 things worse or incriminate or whatever; but although it was a
23 very well-crafted letter, it was peculiar in certain ways. One
24 of which is in the letter, Mr. Greenberg, you sort of speculate
25 about the reasons why it may have happened that Mr. Liebowitz

1 represented that his grandfather had passed away on April 12th
2 when it was clearly on April 9th, and that sort of speculation
3 is the sort of thing I would expect from someone who didn't have
4 access to the real answer. You've got a client. I take it --
5 and he has absolutely no obligation to tell me why he -- I am
6 going to say lied because that's what he did, and I will make
7 clear in a moment why I am convinced of that fact. Am I correct
8 that your client doesn't want to say why he lied? I get he
9 doesn't have to, but it's always nice to have the thoughts of a
10 well-regarded member of the Bar, but it's even better to have
11 the facts.

12 MR. GREENBERG: May I address the Court?

13 THE COURT: Absolutely.

14 MR. GREENBERG: You know, the word "lie," those are
15 harsh words.

16 THE COURT: Yes.

17 MR. GREENBERG: And because it connotes an intentional
18 falsehood --

19 THE COURT: Yes.

20 MR. GREENBERG: -- which would be a serious matter.

21 THE COURT: Yes.

22 MR. GREENBERG: I don't know the answer, and I thought
23 long and hard about how to phrase it to Your Honor and what
24 reaction Your Honor would have. I speculated that you might
25 even take it amiss; you might be annoyed, trying to straddle the

1 situation. I certainly would not want to concede -- I don't
2 think my client would concede that he lied, meaning an
3 intentional false statement, but Your Honor of course will draw
4 her own inferences. I did think from my reading of Your Honor's
5 orders, the last one in particular, that you had a suspicion
6 that there was no death in the family, and you couldn't
7 understand -- it was bolstered by the fact that you could not
8 understand why he wouldn't produce a document. I share your
9 mysticism -- your mystification, if that's a word. I think it
10 is.

11 THE COURT: Well, it seems pretty obvious because if
12 he produced the document, it would reveal the lie because the
13 lie was: I didn't show up on April 12th because that morning I
14 learned of a death in the family, and showing the death
15 certificate from April 9th would reveal that lie.

16 MR. GREENBERG: Of course it would reveal the fact of
17 when the death occurred. And as I say, a lie is such a harsh
18 word.

19 THE COURT: I don't use that term lightly.

20 MR. GREENBERG: I am sure that's true, Your Honor,
21 from all that I have read, and the little I know of you, and
22 about you, and I have heard about you, you wouldn't use it
23 lightly, but I do think that Mr. Liebowitz was, you know, in a
24 daze.

25 Precisely because it was seemingly -- seemingly to

1 me -- so insignificant whether his grandfather died on the 9th
2 or the 12th. Either way, Your Honor, I am sure, would have
3 understood the impact and the necessity for various traditions
4 to be observed. It was mystifying to me to have it -- I could
5 not really view it as an intentional false statement, a lie,
6 because it just seemed totally bizarre and insignificant, and
7 why would he when -- when the truth was really no different
8 virtually.

9 And now it's possible that somebody, Mr. Liebowitz in
10 particular, could have believed that the death of a loved one on
11 the very date of the conference might have been more impressive,
12 have a bigger impact on Your Honor than a death three days ago,
13 but Your Honor knows from being a federal judge and an assistant
14 in this district for years and years. Now there are traditions
15 and customs that are observed for at least six or seven days
16 after a death, and I am sure Your Honor would have understood
17 that a court appearance just was not on his mind, as it should
18 have been, after the death of his grandfather three days before
19 the Court appearance. Why he didn't call? Well, you are really
20 not supposed to be doing business on the phone. I still am
21 mystified why nobody called. It's inexcusable.

22 THE COURT: Well, that was one of my questions. In
23 your letter you represented Mr. Liebowitz employs a staff of 12,
24 two of whom are lawyers, including an associate with large
25 commercial firm experience. If indeed, Mr. Liebowitz were out

1 of the office for a death in the family, it seems like a very
2 simple matter for somebody, lawyer or not, to alert the parties
3 involved in Mr. Liebowitz's commitments of the events; but you
4 are also right that if Mr. Liebowitz had said after the fact, my
5 grandfather died on April 9th, and I was observing a period of
6 mourning for seven days, that would have -- we wouldn't be here.

7 MR. GREENBERG: Yes.

8 THE COURT: That would have been completely
9 acceptable, but you said a couple of things I want to delve into
10 a little more. You said he was in a daze. Let's suppose after
11 a death in the family, as one might be, you were in a daze for a
12 while. Mr. Liebowitz doubled down and quadrupled down and
13 octupled down on the misrepresentation for a period of six
14 months. He wasn't in a daze that whole time. So even if the
15 initial misrepresentation, which was first made on April 15th,
16 was the result of a daze, it is completely implausible that the
17 daze continued up until the last time Mr. Liebowitz tried to
18 weevil his way out of the problem, which was October.

19 So a daze after a death of course is understandable,
20 and, you know, sometimes a death is so devastating that people
21 do fall into a dysfunctional state; and maybe that lasts for a
22 long time, but that's plainly not the case here. Indeed, it
23 doesn't even appear from the docket in this very case that
24 Mr. Liebowitz was observing a seven-day period of mourning and
25 not using the phone or electronics, and the reason I say that is

1 because the death certificate says his grandfather died on
2 April 9th at 10:20 in the morning. On April 9th at 6:34 in the
3 evening I got a letter from Mr. Liebowitz, filed on the ECF
4 system. Sorry, 6:43 p.m., docket entry 30.

5 And then when Mr. Liebowitz didn't appear at the
6 April 12th conference, and I issued the order to show cause on
7 that day, which was a Friday, on Monday, the 15th, I got a
8 letter from Mr. Liebowitz saying, I am sorry I didn't show up.
9 "I had a death in the family. It was an unexpected urgent
10 matter I needed to attend to."

11 So I got at least two letters from Mr. Liebowitz
12 during the period of mourning during which he is supposed to be
13 off the phone and electronics. So I don't think you are
14 representing to me that Mr. Liebowitz was not working during
15 that seven-day period, and I mean no disrespect. Everybody has
16 their own way of honoring their religious beliefs in their own
17 way, and I am not suggesting there is anything wrong with
18 working during the seven-day period. Lots of us disregard the
19 rules that the most observant people would follow.

20 That's not my point. My point is: If you are going
21 to say, oh, these things happened because I was off the grid for
22 seven days, then you need to explain why during the seven days
23 you were on the grid in my case at least twice, and I don't know
24 if Mr. Liebowitz was on the grid in other cases during that
25 period, either, but he wasn't in too much of a daze to either

1 get a letter out to me the night of his grandfather's passing or
2 to send me a letter the Monday after he didn't show up for the
3 conference with the false explanation.

4 So I am not really buying that he was observing the
5 traditions or was in a daze, even during the seven days, but
6 certainly not through the next six months or so. So I think to
7 the extent that grief is the excuse, it only gets you so far.

8 MR. GREENBERG: Yes, Your Honor. If I may just inject
9 something in response quickly?

10 THE COURT: Yes, of course.

11 MR. GREENBERG: I am led to believe that
12 communications with chambers initially, the ones you referred to
13 even late in the same day were by his associate, his more
14 experienced associate.

15 THE COURT: Well, the letter of April 9th and of
16 April 15th purported to be from Mr. Liebowitz.

17 MR. GREENBERG: Yes.

18 THE COURT: They had his signature on them. They were
19 filed under his ECF password. That's a representation under
20 Rule 11 that he has reviewed it and everything in it is Kosher.
21 If --

22 MR. GREENBERG: Quite right.

23 THE COURT: If he is letting people use his ECF
24 password and sign things, and he doesn't undertake the review
25 required by Rule 11, that's a whole separate problem.

1 MR. GREENBERG: Yes. I am afraid anything I raise
2 will open other doors, so I think --

3 THE COURT: One, as I said at the beginning, you don't
4 have to answer any of my questions, but I am being asked to do
5 something, which is vacate a contempt finding, and I have
6 questions. You don't have to answer them.

7 Another thing that wasn't addressed in the letter is,
8 you know, one of the worst facts I think for Mr. Liebowitz,
9 which is why, when I asked for the death certificate, he didn't
10 produce it or when I asked for documentation, which occurred on
11 April 18th at the discovery conference where defense counsel
12 made a plausible case that Mr. Liebowitz had been lying to him
13 with some regularity, and you know, my memory -- I don't have a
14 transcript of it -- but my memory is that at the beginning of
15 the conference, I expressed my sympathies to Mr. Liebowitz --
16 and this was a phone conference -- and said something to the
17 effect of, I understand, but you could have picked up the phone.
18 Anyway, let's get on with the conference, and in the course of
19 the conference, as I said, defense counsel made the case that
20 Mr. Liebowitz had been dishonest for him -- with him, and I
21 think it was at the point where defense counsel mentioned that
22 Mr. Liebowitz had said to defense counsel that he had an
23 emergency out of the country; but defense counsel had learned
24 that it was actually a trade show where Mr. Liebowitz was
25 drumming up business -- this is defense counsel's words, and

1 maybe not exact words -- that I began to be suspicious, and I
2 said, you know what? I am going to require Mr. Liebowitz to
3 provide some documentation of the emergency that caused him to
4 be absent on April 12th.

5 Somebody who didn't believe he was lying would
6 immediately go out and get that documentation, and then one of
7 two things would happen: Either that person would say, oh, my
8 God, I misrepresented the date and would have immediately
9 corrected it, or would have said, hum, I am busted in my lie. I
10 am going to try to put this off for as long as possible so I
11 don't get in trouble. And it seems like it was number two.

12 Just let me pause for a moment. I have a jury out in
13 another case. All right. You know the drill.

14 MR. GREENBERG: Do you need to take a recess?

15 THE COURT: I don't need to immediately. The defense
16 lawyers who are here will get the note in a minute. They want
17 to see Mr. Evangelista's testimony about the escape. That's
18 what they are asking for. Okay.

19 MR. GREENBERG: And, Your Honor, at the moment, I
20 would like to just add a word.

21 THE COURT: Please.

22 MR. GREENBERG: You know, the very -- what's the right
23 word? The very lunacy of it shows that Mr. Liebowitz was really
24 not playing with a full deck at the time. I mean, the notion
25 that he wouldn't produce to you what I think might have

1 satisfied you that he was telling the truth, maybe off by three
2 days about when the death occurred, but I can't really answer
3 that. I don't think Mr. Liebowitz -- but he never really did
4 see, as I understand it -- I would have to caution -- I mean,
5 some things I have corroborated for myself, but he never really
6 saw the death certificate until, you know, he got a hold of me,
7 retained me.

8 THE COURT: Right. But when the judge asks you for
9 documentation, you either have to -- you have to do one of two
10 things: You either have to comply with the order or you have to
11 go -- you have to disregard the order. And the only thing I can
12 think of as to why Mr. Liebowitz disregarded it again and again
13 and again and again is because he knew what it would reveal, and
14 what he tried to do is make it go away by dropping the case.

15 MR. GREENBERG: I do --

16 THE COURT: And then when it didn't go away by
17 dropping the case, instead of taking one of the dozen
18 opportunities to say, okay, I exaggerated. It wasn't --

19 MR. GREENBERG: The 12th.

20 THE COURT: -- the 12th, it was the 9th, he doubled
21 down, tripled down, quadrupled down, octupled down. I don't
22 even know what would come after that.

23 The other thing that is not addressed in the letter is
24 that Mr. Liebowitz failed to comply with my order of contempt,
25 and that was at the end of September, and he kept putting in

1 requests that I stay it without saying anything about why I
2 should; and I kept saying, I am not staying it. Every Monday
3 you got to pay, and let's count how many Mondays went by before
4 he paid. One -- somewhere I have the math. Oh, here it is.
5 One, two, three, four, five, yesterday would have been the
6 sixth, and I am told by the clerk that Mr. Liebowitz paid \$3,700
7 yesterday, although by my math, the number is 3,800; but when
8 you start getting fined, and you know you are going to incur a
9 fine every day until you comply, and you still don't comply, you
10 know, it's sure looks contemptuous. Why should I vacate the
11 contempt finding?

12 MR. GREENBERG: Judge, I am not disagreeing with
13 anything you say and the inferences you might draw, but you
14 might also draw the inference that you are dealing -- I am
15 dealing, we all are dealing -- with a young, inexperienced, in
16 some ways immature lawyer who's created a practice that
17 apparently has been very successful, and I have received a lot
18 of letters from photographers who say he was incredibly helpful,
19 and I have never seen a complaint. Your --

20 THE COURT: Well, I think some of my colleagues might
21 differ.

22 MR. GREENBERG: Absolutely right. There is a whole
23 string of them that have carefully written what their problem
24 was with Mr. Liebowitz, and I don't feel this is the place or
25 the reason why I should have to defend his entire practice. I

1 hope that it won't color your view of Mr. Liebowitz.

2 THE COURT: I mean, I don't really know much about the
3 other instances where Mr. Liebowitz has gotten in hot water. I
4 don't think they involve what this case involves, which is
5 dishonesty, or at least I don't know enough about them to think
6 that they do. But, to me, the whole issue why I question
7 Mr. Liebowitz's fitness to practice is the dishonesty and the
8 failure to own up to the dishonesty and the doubling and
9 quintupling and octupling down on the dishonesty; and as far as
10 I know, this case is unique in that regard. I haven't heard of
11 other such situations. If they are out there, I don't know
12 about them; and I am not really super sympathetic to the notion
13 that, you know, somebody is young and inexperienced and
14 therefore unaware that it's wrong to lie. We all learn that as
15 children; and even if we don't, when we become lawyers, we learn
16 about our ethical responsibilities.

17 And, you know, Mr. Liebowitz has woven himself a very
18 tangled web of lies. Would it have been better to come back to
19 me and say, I overstated it. It wasn't the Friday I missed the
20 conference. It was the Tuesday before. I am sorry?
21 Absolutely. We wouldn't be here. And Mr. Liebowitz would be
22 going about his business, but over and over and over to say
23 something to a judge that you know isn't true, it strikes me as
24 a very serious matter.

25 MR. GREENBERG: I'll just finish by saying, Your

1 Honor, I believe Mr. Liebowitz has problems. That's why I have
2 referred him to a competent analyst on Long Island who I have
3 spoken with, and he is going to undertake a course of treatment
4 that I hope will let him understand where this -- where this
5 irresponsibility comes from.

6 And second, I can only say any sort of dishonesty with
7 the Court is unpardonable, but I really do believe that this
8 particular dishonesty, if that's what we are calling it, is --
9 was not on a material fact. I do not believe that Your Honor
10 would have treated anything differently had you known the
11 grandfather died on the 9th as opposed to the 12th, but I am
12 speculating, and I really don't want to beat a dead horse
13 anymore.

14 Everything you say has the ring of credibility and
15 wisdom about it. I can't really quarrel with anything you are
16 saying except to say, you are dealing with somebody at the very
17 beginning of his career who happened upon an idea that has
18 apparently been lucrative under a statute that permits it and
19 has helped a lot of photographers whose works were being used by
20 commercial enterprises without their consent and without
21 compensation, violations of statute, and I included a letter
22 from the president of the New York Photo Journalist Association,
23 which is a reputable organization, who attests to it, and I have
24 other letters.

25 Yes, the judges of this district have been very

1 displeased with Mr. Liebowitz and have said so in very striking
2 terms in a series of decisions.

3 As I say, Mr. Liebowitz has a lot to learn, and I have
4 ideas on how he should go about learning it. God knows, I don't
5 know about copyright law, and I don't want to. It sounds like
6 the practice that he has is very, very boring, and I have my
7 questions whether it was even practicing law, whether that is
8 law. I hate to think so because I know some very wonderful,
9 smart intellectual property lawyers, but that was his business,
10 his practice. It was successful up to a point despite the
11 bitter criticisms of him by a number of judges of your court and
12 despite the kinds of things you were saying quite correctly.

13 All I can say is, I'm led to believe that because it
14 would have been so easy to produce this document, although he
15 did mention, according to your order, that he felt it was very
16 personal. I don't know what's so personal about a death
17 certificate, but his very -- his grandfather with whom he was
18 very close had just died, and he felt that entering the death
19 certificate in the public record, even though it is a public
20 document, was somehow desecrating the memory of his grandfather.
21 I don't know if that's credible to you, but --

22 THE COURT: Well, it's particularly not after I said,
23 just give it to me. It won't become public.

24 MR. GREENBERG: He didn't even know how to do that,
25 Your Honor. He didn't even know how to do that.

1 THE COURT: Yes, anybody knows how to do that. Put it
2 in an envelope. Put a stamp on it.

3 MR. GREENBERG: You would be amazed at what some young
4 lawyers don't know.

5 THE COURT: Or send it to the chambers email box.

6 MR. GREENBERG: As I say, I don't want to beat a dead
7 horse anymore. You seem to have a strongly-held view. I hope
8 you take into account all of the circumstances, including that
9 it was just three days apart, and thereafter, he continued to
10 maintain a date that he -- I would like to believe he thought
11 was the real date, and then he finally realized that -- and I
12 will just give you one small example. His father, after I
13 submitted the papers, just yesterday his father called me to
14 say, no, he wasn't buried -- the grandfather wasn't buried the
15 same day. It's on the birth -- it's on the death certificate
16 that he was buried that day, and I was told this by the funeral
17 home, and I was told it by your son. He wrote back a little bit
18 later saying, My brain is fried. His phrase, not mine. I am
19 sorry. You are right. I don't know why I said it was the next
20 day. So people get -- make a mistake about a date.

21 THE COURT: And when people realize it, they correct
22 it.

23 MR. GREENBERG: And the question is: Did he realize
24 it and purposely fail to correct it?

25 THE COURT: Absolutely.

1 MR. GREENBERG: I know that's --

2 THE COURT: And I will tell you why. I will tell you
3 why I think that because I do think it's important that the
4 record reflect it.

5 MR. GREENBERG: May I sit down? I don't have anything
6 more I can say --

7 THE COURT: Sure.

8 MR. GREENBERG: -- that's not in our papers.

9 THE COURT: And before I go to the topic I just
10 mentioned, I want to say two things: One is, I did read the
11 letter from the New York Press Photographers Association. I
12 think there might be a page missing.

13 MR. GREENBERG: He said -- I realized that after I
14 submitted it. I have the actual letter. We sent it.
15 Mr. Cutler re-sent it. I have it here, and I will happy to hand
16 it up.

17 THE COURT: I mean, there was either a line or a page
18 you think because --

19 MR. GREENBERG: I couldn't tell, but --

20 THE COURT: -- the second page started in mid
21 sentence, but I am happy to look at the complete version, but I
22 got the gist.

23 MR. GREENBERG: I thought you would, and that's -- but
24 I do have it. I will give it to your --

25 THE COURT: Well, at some point, you know, we will

1 file this, and if you want to give me the complete version, we
2 can do that.

3 And the other point I wanted to make is the
4 suggestions you made in your letter regarding remedial efforts
5 that Mr. Liebowitz might take, not only getting some
6 professional help himself, but seeking guidance on managing a
7 law firm and the like, I think are excellent ideas.

8 My understanding of the problems that my colleagues
9 have had go more to case management than to the problem I see
10 here; but, you know, I am convinced beyond a reasonable doubt,
11 frankly, that this was not inadvertent, and I use the word "lie"
12 for the following reasons, among others: First of all, the
13 matter that led me to schedule the April 12th conference had to
14 do with discovery in the case.

15 Mr. Liebowitz had responded on behalf of his client to
16 an interrogatory asking what the basis was for his claim of
17 \$5,000 in damages, which was, to my recollection, the central
18 interest -- issue in the case because the defendant thought the
19 license could have been obtained for ten bucks, and
20 Mr. Liebowitz was asking for 5,000. So defense counsel said --
21 propounded interrogatories saying, Where are you getting 5,000
22 from? And Mr. Liebowitz's answer was: Contracts, invoices,
23 licensing fees or something like that.

24 Then defense counsel said, okay, produce the
25 contracts, invoices and licensing agreements you are referring

1 to. And that's where the dishonesty began because first,
2 Mr. Liebowitz, through his associate, said, oh, we can't produce
3 them until -- until a protective order is issued, and as I
4 understand it, defense counsel dealt, not only with the
5 associate, but with Mr. Liebowitz himself about the protective
6 order, and that was clearly a false statement. I can't produce
7 them without a protective order because the truth was, I don't
8 have any, as it turned out.

9 Then after the protective order was negotiated and
10 signed by me, a series of false promises were made about why
11 Mr. Liebowitz couldn't produce the documents. He had an
12 emergency out of town, which, according to defense counsel, was
13 not an emergency out of town. Then it was: I will produce some
14 on X date and some on Y date, and nothing was produced
15 responsive to the demand on those dates.

16 And defense counsel finally wrote to me, and I
17 scheduled a conference because it did seem like Mr. Liebowitz
18 was saying things to the other side that were not true or, at
19 the very least, was not complying with his obligations under the
20 federal rules.

21 Then when Mr. Liebowitz didn't show up on April 12th,
22 I adjourned to April 18th and ordered him to explain by the 17th
23 why he didn't show up and why he shouldn't have to pay defense
24 counsel's fees.

25 On the 15th, that's when I first heard from

1 Mr. Liebowitz about why he didn't show up, and what he said was
2 he was sorry. He had a death in the family. Here is the part
3 that was false. Quote, "This was an unexpected urgent matter I
4 needed to attend to."

5 Clearly not the case that it was unexpected on the
6 12th that his grandfather had died on the 9th. And, frankly, I
7 find it inconceivable that on Monday, the 15th you could be
8 under the mistaken impression that the death had occurred on the
9 previous Friday rather than the previous Tuesday.

10 We then had the conference by phone on the 18th
11 because Mr. Liebowitz said he was not available to come in
12 person, and things got worse at that conference. It took a long
13 time and a lot of questions from me, but eventually it became
14 clear that there were no contracts, invoices or licensing
15 agreements and that the whole nonsense about the protective
16 order -- and I am going to get to it -- was false.

17 And then defense counsel made the accusation that
18 Mr. Liebowitz had lied and said he was out of town on an
19 emergency when, in reality, he was in Europe trying to drum up
20 business.

21 At that point I had concerns, not only about the
22 misrepresentations that Mr. Liebowitz had made to defense
23 counsel in connection with discovery, but also as to the good-
24 faith basis for his damages demand. And I said, I am going to
25 need some documentation regarding who passed away, when, and how

1 Mr. Liebowitz was notified.

2 At that point -- and I also said defense counsel
3 should submit his records for the completely unnecessary motion
4 to compel, and I would let Mr. Liebowitz oppose defendant's
5 application that plaintiff recover those fees.

6 Now, at that point, any rational person who was
7 telling the truth would go out and gather the documentation, or
8 who believed that he was telling the truth would gather the
9 documentation, realize the mistake, and correct it.

10 I use the term "mistake" generously because, as I
11 said, I really don't think even in your grief that on Monday you
12 could think the death was on Friday when it was on Tuesday. And
13 Mr. Liebowitz then began the doubling down because -- and that
14 was on May 1st. He sent a letter saying his grandfather had
15 died on April 12th and that Mr. Liebowitz had to immediately
16 arrange to be with family and assist in customs that had to be
17 done before the Sabbath, and that's the embellishment that
18 proves the lie because if the death wasn't on Friday, then there
19 were no customs that had to be done immediately that day before
20 sundown. That's when Mr. Liebowitz made the decision, I am not
21 going to own up to my previous embellishment. I am going to
22 tell an outright lie in an effort to put this issue behind me,
23 and this was now a good three weeks plus after the death. I
24 cannot imagine any reason short of psychosis for claiming that
25 you were running around taking care of things that had to be

1 done before Friday on sundown -- before Friday sundown when the
2 gentleman had passed away three days earlier and was buried
3 three days earlier, except to intentionally mislead the Court.
4 And we have no reason to believe Mr. Liebowitz is psychotic. He
5 clearly knows right from wrong. He just doesn't seem to have a
6 lot of concern about staying on the correct side of that line.

7 So May 1, the defendant doubles down. There is still
8 some dispute over discovery. I, on May 1, the same day, sort of
9 throw up my hands about the discovery dispute and say, you know,
10 the failure to produce documents is going to hurt the plaintiff
11 more than the defendant. So can't -- nothing more I can do.
12 And I also said to Mr. Liebowitz, I want documentation, not just
13 your say-so, and I suggested either a death certificate or an
14 obituary or something in the defendant's phone, and I gave him
15 until May 3rd. Well, on May 3rd, Mr. Liebowitz sent a letter
16 saying, oh, the case is settled.

17 The following Monday, I believe it was, May 6th,
18 defense counsel said, well, not quite. Mr. Liebowitz has to pay
19 my fee, and when he does that, then it will be settled, and it
20 was settled the next day, May 7th, and that's when I said,
21 great, but there is an open issue, which is Mr. Liebowitz still
22 hasn't documented the death, and this is the part where I think
23 maybe is part of the defendant's -- excuse me -- Mr. Liebowitz's
24 MO, which is to try to settle cases once he gets into hot water
25 or drops it.

1 I made clear that even though the documentation was
2 supposed to be provided by May 3rd, I was going to give
3 Mr. Liebowitz until May 9th, and then he tripled down by putting
4 in a declaration where he recertified his previous false
5 statements, and I don't need to go through the whole sordid
6 chronology except to say that there were one, two, three,
7 four -- I don't know -- something like eight times where
8 Mr. Liebowitz kept saying, What I have already said is enough.
9 It's the truth. I shouldn't have to provide this information.

10 And each time I said, No, it's not. I eventually
11 imposed sanctions, and Mr. Liebowitz -- I don't know what he was
12 thinking about how this was going to go away. I think he
13 thought -- and maybe this has worked in the past -- that I would
14 lose interest; but as I said, I think a lawyer who intentionally
15 lies to the Court is a significant matter, and I wouldn't call
16 the lie immaterial.

17 I think the reason Mr. Liebowitz lied is because he
18 thought it would make a difference, and, you know, depending on
19 what the facts are as to whether or not Mr. Liebowitz was, in
20 fact, off the grid between May 9th and May 16th, it may be even
21 more egregious than I think, but it may be that I would have
22 been equally forgiving had the death -- had the truth been told,
23 but I don't know that everybody would be, and that one could say
24 it's immaterial; but even if the original lie was immaterial,
25 those subsequent ones became material.

1 So, you know, not only does the defendant -- excuse
2 me -- not only does Mr. Liebowitz have a track record in this
3 case of lying to the other side, but in my mind, again, it's
4 inconceivable that even on April 15th, when the wound was still
5 fresh, that he could possibly have thought that the death had
6 occurred the previous Friday when it was really the previous
7 Tuesday. Even if there is some world in which that is
8 conceivable, anybody who believed himself to be telling the
9 truth would have immediately gone out, gotten the documentation,
10 and corrected the error. The defendant didn't go out and get
11 the documentation because he knew he was lying; and he then
12 chose to repeat that lie six, eight, ten times in circumstances
13 where, frankly, if for no other reason than to get the Court off
14 one's back, one would check one's facts.

15 I think Mr. Liebowitz, again, when he gets into hot
16 water, he just decides to kick the can down the road as long as
17 he can: Try to drop the case, hope the judge will go away. And
18 I am sure he is disappointed that I didn't go away.

19 And in addition to everything I have just said, the
20 failure to produce the death certificate upon many, many orders
21 to do so really has no other explanation except that
22 Mr. Liebowitz was aware it would reveal what had now become
23 multiple lies. And I have heard -- so and no doubt at all that
24 my order of contempt for the failure to produce the death
25 certificate is justified. The orders were very clear. They

1 were lawful, and for the reasons I have described, he had not
2 diligently attempted to comply, indeed, apparently not until
3 incarceration was the threat.

4 Nor has there been any explanation at all for the
5 contempt of my September 27th order of contempt which required
6 Mr. Liebowitz to pay money each business day until he complied.
7 So I see no reason to vacate either order.

8 The second order was equally clear. It was equally
9 lawful, and it is equally clear that there was no diligent
10 attempt to comply. I haven't heard that Mr. Liebowitz didn't
11 have the money or didn't have the ability to make the payments.
12 He just didn't want to.

13 Even when I increased the payments to 500 a day, that
14 did not move Mr. Liebowitz. Apparently, only the prospect of
15 departing this courtroom in handcuffs seemed important enough to
16 Mr. Liebowitz to do what I had asked him to do back in April.

17 I wish Mr. Liebowitz had consulted Mr. Greenberg or
18 some other equally ethical and respected lawyer back then
19 because this order of contempt, unfortunately, is going to
20 follow Mr. Liebowitz wherever he goes in the future where he is
21 asked, Have you ever been held in contempt? because I am not
22 going to vacate it. I see no basis to vacate it.

23 Even though the payment was 3,700, and by my count it
24 should be 3,800, I will declare the financial penalty satisfied
25 as requested.

1 Mr. Greenberg's letter requests three things: That I
2 vacate the two concept orders, which I am not going to do; that
3 I declare the financial penalty satisfied, which I will do; and
4 that I permit him to continue to practice before this court,
5 which is not up to me. That is up to the grievance committee of
6 the court. I find this series of events serious enough to
7 warrant their consideration. They may find that what's occurred
8 so far is enough to bring Mr. Liebowitz to the point he needs to
9 be brought to. They may not. Not my call. But I am not going
10 to -- I have made a referral to the grievance committee, and I
11 am not going to withdraw it.

12 I can only say, Mr. Liebowitz, that your work may be
13 valued by your clients. It may be perfectly appropriate, but it
14 is not a good business model to bring a lawsuit and make a
15 demand that you don't have a good faith basis for; lie about it
16 to the other side; lie to the Court; try to drop the case when
17 you get busted; and end up sitting where you are sitting now,
18 which is steps away from leaving the courtroom in handcuffs.
19 Not only is it a bad business model, but it's a bad way to be as
20 a person. I cannot imagine that it is a very pleasant situation
21 to be constantly scrambling to mop up problems that you cause
22 yourself. So if your business model is too much to handle
23 responsibly, you got to change it, but getting way out over your
24 skis and then trying to drop the case when you get in trouble
25 doesn't always work.

1 So I sincerely hope that you take the advice of your
2 lawyer, and get some help personally and professionally to make
3 sure that you are not in this situation again.

4 Going forward, if you apply to be admitted pro hoc
5 vice in other courts, you are going to have to disclose this
6 problem. Clients may find out about it. I recognize that it
7 is, as your lawyer said in his letter, something that will cause
8 damage to your professional career, but I think it's justified
9 under the circumstances given that this was not a momentary
10 lapse or even a short-term lapse, but in my mind, a long-term
11 campaign of deception of the sort that we should not tolerate in
12 lawyers who practice before this court.

13 There are a few things in Mr. Greenberg's letter that
14 I think should be redacted, not very many. One is on page 4
15 under Remedial Efforts, the third sentence beginning with, "As
16 counsel understands it," that can be redacted.

17 Exhibit C, which is the death certificate, it seems to
18 me that the deceased's home address, date of birth, and social
19 security number can be redacted, as can be the home address of
20 the deceased's son.

21 In Exhibit D, which is the bill from the funeral home,
22 again, the date of birth of the deceased may be redacted, and
23 the home address of the son may be redacted.

24 In Exhibit E, which is Mr. Liebowitz's birth
25 certificate, his date of birth can be redacted.

1 In Exhibit F, which is his mother's naturalization
2 certificate, her date of birth and address can be redacted,
3 although I doubt it's the current address.

4 And in Exhibit G, which is a portion of a trust
5 agreement, on the second page of Exhibit G, which is the third
6 page of the agreement, the percentages can all be redacted and
7 the names of the distributees other than Mr. Liebowitz can be
8 redacted.

9 Is there anything else, Mr. Greenberg, that you think
10 is so private that it shouldn't be publicly filed?

11 MR. GREENBERG: I am sorry to say, I have not had a
12 chance to closely determine that, but if you could just give me
13 until the end of the afternoon, I would be happy to get back to
14 chambers today and tell -- and with the suggestion of anything
15 else that we might have or that we have no objection.

16 THE COURT: All right. Well, let me know. Do one of
17 two things: By 5:00 p.m., let me know if you think there is
18 anything else. If you don't, then file this document with the
19 redactions I have described on the ECF system by 5:00 p.m.; and
20 if there are other things that you think should be redacted, let
21 me know by 5:00 p.m., and I will get back to you as soon as I
22 can.

23 MR. GREENBERG: Apropos of the letter that appeared to
24 have something dropped from it from the New York Press
25 Photographers Association --

1 THE COURT: Yes, you can correct that when you file
2 it.

3 MR. GREENBERG: I have the correct letter now. I
4 mean, he sent me, but when I realized there was something wrong,
5 he sent me a replacement with the same letter; but, you know,
6 now it reads like a continuous letter.

7 THE COURT: The missing words are inserted. Well, so
8 when you file the redacted version, you can substitute the
9 corrected exhibit.

10 MR. GREENBERG: Thank you.

11 THE COURT: All right. Is there anything else we
12 should do this morning?

13 MR. GREENBERG: Well, I can think of lots of things we
14 should do, but probably not in this courtroom.

15 THE COURT: All right. Well, and if I didn't say it,
16 I find that the defendant is --

17 MR. GREENBERG: Your Honor --

18 THE COURT: Not the defendant. I keep saying the
19 defendant. I find Mr. Liebowitz is no longer in contempt, and
20 there is no need for any further sanctions, having coerced the
21 compliance that I sought.

22 MR. GREENBERG: Your Honor, Mr. Liebowitz has
23 instructed me and informs me that he would like to say
24 something. I defer to my client's wishes, although I don't know
25 that it's the best idea in the world, but I think Your Honor

1 might want to hear from him briefly.

2 THE COURT: Happy to.

3 MR. LIEBOWITZ: Your Honor, I am really, really sorry
4 of what happened. You know, I was really, really close with my
5 grandfather, and it was -- my mind was going in so many
6 different directions that I wasn't thinking, and this is truly
7 from my bottom of my heart that just everything from, you know,
8 being with my parents and my mother and all of this, everything
9 happened all at once, and it was -- I've never seen -- I never
10 felt anything like this before, and I have an associate that I
11 rely upon in my law firm that handles things for me, and I told
12 him, you know, those items that were on the docket was all done
13 by him, and I was just with my family. I couldn't think of
14 anything else, and I just -- I am truly sorry for what happened.
15 It was really an honest mistake. Everything was just going, you
16 know, in so many different directions, and I have learned from
17 this mistake and will make sure that I get the appropriate, you
18 know, help to, you know, help me out, and it was truly, really
19 an honest mistake, and it shouldn't have happened, and I'm very
20 sorry for that.

21 THE COURT: Well, I think the first thing you ought to
22 do when you get help is understand it's not going to work if you
23 are not honest with that doctor and with yourself, and you are
24 clearly not being honest with yourself because you can throw
25 your associate under the bus for what happened between April 9th

1 and April 15th. You cannot blame your associate for what
2 happened for everything else up until now, and you seem to be
3 ignoring all of the subsequent lies, all the subsequent failures
4 to comply by my orders, and all of the factors I have discussed
5 today which demonstrate to me that, even if the associate you
6 employ made a false statement in a letter of April 15th, you
7 adopted it before me on April 18th, in your letter of May 1st,
8 and repeatedly thereafter. So stop kidding yourself.

9 You need to work on yourself and your practice, and if
10 you keep kidding yourself, nothing is going to change. So, you
11 know, if there were a good explanation for the things I
12 discussed today, I am sure I would have heard it from you and
13 your lawyer. I didn't, because this clearly was not an honest
14 mistake; and even if it were at first, it very quickly became,
15 as I said, a concerted campaign of deception.

16 And what I would do, to be honest, is I would buy the
17 transcript of today's proceeding, and I would give it to the
18 doctor at the first appointment because, you know, I am
19 certainly no professional in that area, but the one thing I feel
20 safe in saying is that if you lie to yourself, and you lie to a
21 mental health professional, that person is not going to be able
22 to help you as effectively as he or she would if you told the
23 truth. So you need to do some introspection. I don't doubt
24 that you're sorry, but I have no doubt that this was not an
25 honest mistake. You can't foist it on your associate.

1 Indeed, since all of those documents were filed under
2 your ECF password, and that ECF password is a representation
3 under Rule 11, you need to immediately review how you manage
4 your practice because you can't have -- if what you are telling
5 me is that people are filing things that you have nothing to do
6 with and representing that they are from you, that's a whole
7 additional problem. So, time to start facing the facts.

8 Unless there is anything further, we are adjourned.

9 MR. GREENBERG: Thank you, Your Honor.

10 MR. LIEBOWITZ: Thank you.

11 (Time noted: 11:07 a.m.)